

EXHIBIT B

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 13 FADEI USA, INC., PAN AMERICAN
 14 ENGINEERING and EQUIPMENT CO., INC.,
 15 MANUEL SILVA, and MARIANI PACKING CO.,
 16 INC.

17 VISTAN CORPORATION,

18 Plaintiff,

19 v.

20 FADEI USA, INC., PAN AMERICAN
 21 ENGINEERING and EQUIPMENT CO.,
 22 INC., MANUEL SILVA, and MARIANI
 23 PACKING CO., INC.

24 Defendants.

25 AND RELATED COUNTERCLAIMS.

26 Case No. C 10-4862 JCS

27 **DEFENDANTS' FIRST AMENDED
 28 INVALIDITY CONTENTIONS AND
 ACCOMPANYING DOCUMENT
 PRODUCTION [PATENT L.R. 3-3, 3-4,
 3-6]**

29 EXHIBIT B

1 Defendants Mariani Packing Co., Inc. (“Mariani”), Fadei USA, Inc. (“Fadei USA”), Pan
 2 American Engineering and Equipment Company Co., Inc. (“Pan American”), and Manuel Silva
 3 (“Silva”) (collectively, the “Defendants”) submit the following as their First Amended Invalidity
 4 Contentions for U.S. Patent Number 5,870,949 (“the ‘949 patent”) pursuant to Patent L.R. 3-3
 5 ~~and identify and produce documents pursuant to Patent L.R. 3-3 and Patent L.R. 3-4.~~

6 **PRELIMINARY STATEMENT, RESERVATION OF RIGHTS,**
 7 **AND GENERAL OBJECTIONS**

8 1. ~~This disclosure is~~These First Amended Invalidity Contentions are directed to
 9 invalidity issues only. Because the Local Patent Rules do not require any disclosures regarding
 10 unenforceability; ~~or~~ infringement ~~or claim construction issues~~, this disclosure does not
 11 necessarily address those issues, and Defendants reserve all rights, including the right to address
 12 them at a later time.

13 2. These First Amended Invalidity Contentions are based on Defendants’ current
 14 knowledge, understanding, and belief as to the facts and information available as of the date of
 15 these contentions. Discovery in this action is ongoing, and Plaintiff has not completed its
 16 document production, and Defendants have not completed their investigation, discovery, or
 17 analysis of information related to this action.

18 3. ~~Plaintiff has violated the Local Patent Rules and has failed to produce all~~
 19 ~~documents required under Local Patent Rule 3-2 in a timely manner, and has materially~~
 20 ~~prejudiced Defendants right to a full and fair opportunity to prepare these contentions following,~~
 21 ~~and in view of, Plaintiff’s document production. Accordingly, Defendants reserve all rights~~
 22 ~~amend or modify these disclosures at a later time based on Plaintiff’s untimely production.~~

23 43. While Defendants have made a diligent and good-faith effort to provide a
 24 comprehensive list of prior art relevant to this case, Defendants reserve the right to seek leave of
 25 Court to amend, supplement, or materially modify its prior art list and these First Amended
 26 Invalidity Contentions as discovery progresses pursuant to Patent Local Rule 3-6 and consistent
 27 with section I.C. This reservation of rights includes the right to supplement prior art under 35
 28 U.S.C. §§ 102(a), (b), (c), (d), (e), (f), and (g), and 103 ~~and 112~~ based on information Defendants
~~1230194.4 1230194.4~~

1 may learn during discovery in this case.

2 54. Defendants provide these First Amended Invalidity Contentions ~~prior to any based~~
 3 ~~on the recent~~ claim construction ruling by the Court with respect to the claims of the '949 patent
 4 asserted by Plaintiff in its proposed First Amended Infringement Contentions.~~Any invalidity~~
 5 ~~analysis may depend, ultimately, upon claim construction, which is a question of law reserved for~~
 6 ~~the Court. Defendants reserve the right to seek leave to amend, supplement, or materially modify~~
 7 ~~their prior art list and invalidity contentions after the claims have been construed by the Court.~~
 8 ~~Defendants also reserve the right to seek leave to amend, supplement, or materially modify their~~
 9 ~~prior art list and invalidity contentions based on any claim construction positions that Plaintiff~~
 10 ~~may take in this case. Defendants also reserve the right to seek leave to assert new arguments that~~
 11 ~~a claim is anticipated, obvious, indefinite, not enabled, or fails to meet the written description~~
 12 ~~requirement based on any claim construction position Plaintiff may take or based on any claim~~
 13 ~~construction the Court may adopt in this case., and pursuant to Patent Local Rule 3-6, reserving~~
 14 ~~all rights of appeal relative to that ruling.~~

15 6. ~~To the extent that these Invalidity Contentions reflect constructions of claim terms~~
 16 ~~that may be consistent with or implicit in Plaintiff's Infringement Contentions, no inference is~~
 17 ~~intended or should be drawn that the Defendants agree with such claim constructions. Any~~
 18 ~~statement herein describing or tending to describe any claim element is provided solely for the~~
 19 ~~purpose of understanding the relevant prior art and the invalidity contention herein. The~~
 20 ~~Defendants expressly reserve the right to propose any claim construction they consider~~
 21 ~~appropriate and/or to contest any claim construction they consider inappropriate. In part because~~
 22 ~~of the uncertainty of claim construction, the Defendants' Invalidity Contentions are sometimes~~
 23 ~~made in the alternative and are not necessarily intended to be consistent with each other, and~~
 24 ~~should be viewed accordingly. Further, by including in this disclosure prior art that would be~~
 25 ~~anticipatory or render a claim obvious based on a particular scope or construction of the claims,~~
 26 ~~including that apparently applied by Plaintiff in its Infringement Contentions, the Defendants'~~
 27 ~~Invalidity Contentions herein are not, and should in no way be seen as admissions or~~
 28 ~~to the accuracy of such scope or construction.~~

I. INVALIDITY CONTENTIONS (PATENT L.R. 3-3)

A. Patent L.R. 3-3(a): Identification of Prior Art

Plaintiff accuses Defendants of infringing two (2) claims of U.S. Patent Number 5,870,949 (the “949 patent”), in particular claims 5 and 12 (collectively, the “Asserted Claims”). See Plaintiff’s (Proposed)Amended Infringement Contentions. The Asserted Claims of the ‘949 patent are invalid in view of what few prior art references were before and considered by the patent examiner during prosecution, and in view of the additional prior art references disclosed herein, which can alone, or in combination, render the asserted claims of the ‘949 patent invalid.

Pursuant to Patent L.R. 3-3(a), in addition to the prior art identified in the ‘949 patent and prosecution history, at least the following prior art references are relevant to the validity of the ‘949 patent, and may alone, or in combination, render the asserted claims of the ‘949 patent invalid:

Great Britain Patent No. 1,072,178	Published June 14, 1967
U.S. Patent No. 5,870,949	February 16, 1999
U.S. Patent No. 4,213,382	July 22, 1980
U.S. Patent No. 3,282,314	November 1, 1966
U.S. Patent No. 4,122,765	October 31, 1978
U.S. Patent No. 5,577,439	November 26, 1996
U.S. Patent No. 3,061,070	October 30, 1962
U.S. Patent No. 4,306,649	December 21, 1981
U.S. Patent No. 1,071,333	August 26, 1913
U.S. Patent No. 1,802,973	April 28, 1931
U.S. Patent No. 2,938,620	May 31, 1960
U.S. Patent No. 3,088,582	May 7, 1963
U.S. Patent No. 3,199,558	August 10, 1965
Great Britain Patent No. 548,940	Accepted October 30, 19
Australia/U.K. Patent No. 664,500	Published January 9, 195

1	U.S. Patent No. 436,629	September 16, 1890
2	U.S. Patent No. 1,443,621	January 30, 1923
3	U.S. Patent No. 2,265,515	December 9, 1941
4	U.S. Patent No. 3,469,612	September 30, 1969
5	U.S. Patent No. 2,360,103	October 10, 1944
6	U.S. Patent No. 2,413,861	January 7, 1947
7	U.S. Patent No. 2,558,205	June 26, 1951
8	U.S. Patent No. 2,567,591	September 11, 1951
9	U.S. Patent No. 2,688,352	September 7, 1954
10	U.S. Patent No. 2,740,440	April 3, 1956
11	U.S. Patent No. 2,827,088	March 18, 1958
12	U.S. Patent No. 3,291,172	December 13, 1966
13	U.S. Patent No. 3,305,071	February 21, 1967
14	U.S. Patent No. 3,318,349	May 9, 1967
15	U.S. Patent No. 4,308,292	December 29, 1981
16	U.S. Patent No. 3,561,583	February 9, 1971
17	U.S. Patent No. 3,915,082	October 28, 1975
18	U.S. Patent No. 3,965,809	June 29, 1976
19	U.S. Patent No. 4,009,650	March 1, 1977
20	U.S. Patent No. 4,096,795	June 27, 1978
21	U.S. Patent No. 4,103,607	August 1, 1978
22	U.S. Patent No. 4,216,712	August 12, 1980
23	U.S. Patent No. 4,871,568	October 3, 1989
24	U.S. Patent No. 5,577,439	November 26, 1996
25	U.S. Patent No. 3,556,281	January 19, 1971
26	U.S. Patent No. 3,618,648	November 9, 1971
27	U.S. Patent No. 3,738,257	June 12, 1973
28		

1 U.S. Patent No. 3,910,416 October 7, 1975
 2 U.S. Patent No. 4,485,732 December 4, 1984
 3 U.S. Patent No. 5,024,147 June 18, 1991
 4 U.S. Patent No. 5,619,912 April 15, 1997
 5 U.S. Patent No. 3,180,477 April 27, 1965
 6 Document entitled: Herbort "High Capacity Pitting Machine for Cherries 27A, for Plums
 7 27F"
 8 2 Page brochure by Elliott Manufacturing Co. discloses a prune pitting apparatus
 9 Letter dated October 21, 1997 (and quotation attached thereto) by Elliott Manufacturing
 10 Company, inc. refers to and describes a prune pitting apparatus
 11 Herbort Cherry and Plum Pitter Model 27A Operating Instructions and Spare Part List

B. Patent L.R. 3-3(b): Anticipation and/or Obviousness

Pursuant to Patent L.R. 3-3(b), Defendants identify the items of prior art that anticipate the asserted claim(s) or render it obvious.

Claims 5 and 12 are anticipated under 35 U.S.C. § 102 in view of British Patent No. 1,072,178, published in 1967 (30 years prior) to Sunsweet Growers (the "Sunsweet Patent"). The Sunsweet Patent discloses a support structure or frame upon which the features of the apparatus are mounted; grippers or means for holding the fruit during pitting operations; a pitting plunger or knife used for pitting; and cam operated grippers which vary the gripping force during and after pitting and a drive assembly used to translate the held fruit. As for the intermittent element of the Asserted Claims of the '949 patent, intermittent pitting machines were well known in the art (*see infra*), and "a skilled artisan could take [Sunsweet's] teachings in combination with his own knowledge and be in possession of the device of applicant's claim." *In re Graves*, 69 F.3d 1147, 36 U.S.P.Q.2d (BNA) 1697 (Fed. Cir. 1995)(finding inherent anticipation under section 102); *Fenton Golf Trust v. Cobra Golf, Inc.*, 48 U.S.P.Q.2d (BNA) 1198 (N.D. Ill. 1998)(finding inherent anticipation under section 102). Thus, a person having ordinary skill in the art would certainly have understood that a pitting apparatus could be adapted to be operated intermittently,

1 rather than continuously. Accordingly, the '949 patent is anticipated under section 102 by British
 2 Patent No. 1,072,178. This single prior art reference also renders the '949 patent obvious under
 3 35 U.S.C. § 103.

4 With respect to obviousness in view of combinations of prior art under 35 U.S.C. § 103,
 5 the U.S. Supreme Court's decision in *KSR International Co. v. Teleflex Inc., et al.*, 550 U.S. 398,
 6 415-16 (2007) ("KSR") held that a claimed invention can be obvious even if (assuming for the
 7 sake of argument and not by way of admission) there is no teaching, suggestion, or motivation for
 8 combining the prior art to produce that invention. In summary, *KSR* holds that patents that are
 9 based on new combinations of elements or components already known in a technical field may be
 10 found to be obvious. *See generally KSR*, 550 U.S. 398. Specifically, the Court in *KSR* rejected a
 11 rigid application of the "teaching, suggestion, or motivation [to combine]" test. *Id.* at 418. "In
 12 determining whether the subject matter of a patent claim is obvious, neither the particular
 13 motivation nor the avowed purpose of the patentee controls. What matters is the objective reach
 14 of the claim." *Id.* at 419. "Under the correct analysis, any need or problem known in the field of
 15 endeavor at the time of invention and addressed by the patent can provide a reason for combining
 16 the elements in the manner claimed." *Id.* at 420. In particular, in *KSR*, the Supreme Court
 17 emphasized the principle that "[t]he combination of familiar elements according to known
 18 methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416.
 19 A key inquiry is whether the "improvement is more than the predictable use of prior art elements
 20 according to their established functions." *Id.* at 417.

21 *KSR*'s effect on mechanical patents, such as the mechanical patent at issue here, has been
 22 significant. *See Wyers v. Master Lock Co.*, 616 F.3d 1231 (Fed. Cir. 2010), cert. denied, (Federal
 23 Circuit found that even in the absence of expert testimony, judges can make a common sense
 24 determination in mechanical cases to combine the prior art to find patent claims obvious and thus
 25 invalid); *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1158 (Fed. Cir. 2007)
 26 ("accommodating a prior art mechanical device to modern electronics would have been reasonably
 27 obvious to one of ordinary skill in children's learning devices."); *In re Icon Health and Fitness, Inc.*,

1 496 F.3d 1374, 1377 (Fed. Cir. 2007) (mechanical case with Federal Circuit upholding Board of
 2 Patent Appeals' obviousness finding that a treadmill advertisement and U.S. Patent No. 4,370,766 by
 3 Teague ("the '766 patent"), which disclosed a folding bed using a gas spring, rendered the patent
 4 obvious); *Agrizap, Inc. v. Woodstream Corp.*, 530 F.3d 1337, 1344 (Fed. Cir. 2008) (reversing jury
 5 determination of non-obviousness in relation to a mechanical rat trap device).

6 More recently, in 2011, the Federal Circuit further expanded upon KSR's application to
 7 relatively simple mechanical devices, such as the apparatus at issue here. In *Tokai Corp. v.*
 8 *Easton Enterprises, Inc.*, 632 F.3d 1358 (Fed. Cir. 2011), the Federal Circuit affirmed summary
 9 judgment of obviousness entered by the District Court in relation a mechanical patent. In
 10 arriving at its conclusion that Tokai's asserted claims were obvious, the appellate panel looked at
 11 the fact that the components of the claim are "simple mechanical parts that are well known in the
 12 art;" that "a need for safety utility lighters was recognized in the art;" that similar safety switches
 13 were already available for cigarette lighters (an admitted analogous art); and that the art is
 14 "predictable." As in *KSR*, the appellate court here held that the "identified, predictable solution"
 15 to the "known problems" were within the grasp of a skilled artisan.

16 Moreover, in view of the Supreme Court's KSR decision, the PTO issued a set of new
 17 Examination Guidelines. See Examination Guidelines for Determining Obviousness Under 35
 18 U.S.C. §103 in view of the Supreme Court Decision in *KSR International Co. v. Teleflex, Inc.*,
 19 72 Fed. Reg. 57526 (October 10, 2007). These Guidelines summarized the KSR decision, and
 20 identified various rationales for finding a claim obvious, including those based on other
 21 precedents. Those rationales include:

- 22 (A) Combining prior art elements according to known methods to yield predictable
 results;
- 23 (B) Simple substitution of one known element for another to obtain predictable results;
- 24 (C) Use of known technique to improve similar devices (methods, or products) in the
 same way;
- 25 (D) Applying a known technique to a known device (method, or product)ready for

1 improvement to yield predictable results;

2 (E) “Obvious to try” – choosing from a finite number of identified, predictable
 3 solutions, with a reasonable expectation of success;

4 (F) Known work in one field of endeavor may prompt variations of it for use in either
 5 the same field or a different one based on design incentives or other market forces
 6 if the variations would have been predictable to one of ordinary skill in the art;

7 (G) Some teaching, suggestion, or motivation in the prior art that would have led one
 8 of ordinary skill to modify the prior art reference or to combine prior art reference
 9 teachings to arrive at the claimed invention.

10 *Id.* at 57529.

11 The Defendants contend that one or more of these rationales apply in considering the
 12 obviousness of the claims of the ‘949 patent. A person of ordinary skill at the time of the
 13 invention had reason to combine or modify one or more of the references listed and charted in
 14 **Exhibit A** in light of the knowledge of a person of ordinary skill in the art at the time of the
 15 invention and information in the prior art cited herein. A patent claim may be obvious if the
 16 combination of elements was obvious to try or there existed at the time of the invention a known
 17 problem for which there was an obvious solution encompassed by the patent’s claims. In
 18 addition, when a work is available in one field of endeavor, design incentives and other market
 19 forces can prompt variations of it, either in the same field or a different one. If a person of
 20 ordinary skill can implement a predictable variation, Section 103 bars its patentability.

21 Because the ‘949 Patent simply arranges old elements with each performing the same
 22 function it had been known to perform and yields no more than what one would expect from such
 23 an arrangement, the combination of these old elements is obvious. (*KSR Int’l Co. v. Teleflex*
 24 Inc., 127 S. Ct. 1727, 1742 (2007)). Further, in the prior art, there were well recognized design
 25 needs and market pressures to develop pitting machines that more efficiently separate fruit from
 26 pits. (See, e.g., British Patent No. 1,072,178, published in 1967 (30 years prior), the Sunsweet
 27 Patent). Such design needs and market pressures provide ample reason to combine prior art

elements in the manner recited in the claims. (KSR, 127 S. Ct. at 1742). Moreover, since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. *Id.* Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution. (Note that most of the most of the prior art was not before or considered by the Examiner). The above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art.

Accordingly, common sense and the teachings of the prior art render the claims invalid under either Section 102 or Section 103.

Moreover, a person of ordinary skill would have been motivated to combine the above prior art based on the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. The identified prior art addresses the same or similar technical issues and suggest the same or similar solutions to those issues. Moreover, some of the prior art refers to or discusses other prior art, illustrating the close technical relationship among the prior art.

To the extent that Plaintiff challenges a combination of prior art with respect to a particular element, Defendant reserves the right to seek leave to supplement these contentions to further specify the motivation to combine the prior art. Defendants may rely on cited or uncited portions of the prior art, other documents, and fact and expert testimony to establish that a person of ordinary skill in the art would have been motivated to modify or combine the prior art so as to render the claims invalid as obvious.

Below are several examples of prior art combinations with respect to particular limitations. These prior art combinations are not exhaustive; rather, they are illustrative examples of the prior art combinations disclosed generally above. These exemplary combinations are alternatives to Defendants' anticipation and single reference obviousness contentions, and thus, they should not be interpreted as indicating that any of the individual references included in the exemplary combinations are not alone invalidating prior art under 35 U.S.C. §§ 102 and/or 103

1 The ‘949 patent discloses prior art that includes a substantially identical pitting operation
 2 as that in Claims 5 and 12 (See Figures 1 - 9), wherein holders are translated along a looped
 3 conveyor, and the gripping force exerted on the fruit in the holders can be varied via camming
 4 surfaces. The design and function of the holders, rubber cup, and cam operated gripping
 5 members supporting Claim 5 and 12 are virtually identical to the same structures disclosed in
 6 U.S. Patent 3,556, 281 issued to Magaroli in 1971. Indeed, the ‘949 Patent admits that the
 7 principal difference between the pitting apparatus shown in the prior art, and that claimed in the
 8 ‘949 patent is the additional of a wiper assembly in the ‘949 patent. (col. 11, lines 55 - 60)
 9 Importantly, however, the wiper assembly is not an element of Claims 5 and 12, and thus the
 10 translating pitting apparatus in Claims 5 and 12 is substantially identical to the well known prior
 11 art.

12 The ‘949 patent further discloses that it was well known in the art that intermittent
 13 conveyor systems were available means of conducting automated pitting operations. (see col. 8,
 14 lines 58 – 63). stating, “Some conventional variations on the above described pitting apparatus
 15 employ an intermittent fruit holder conveyor drive mechanism. In such variations, the fruit
 16 holders are translated into position for pitting, then remain stationary during pitting, and are then
 17 translated away from the pitting position.” (*See* U.S. Patent No. 3,618,648 issued to Becq in
 18 1971).

19 According to the ‘949 patent, Claims 5 and 12 merely combine the well known
 20 intermittent drive mechanism with the well known pitting apparatus described in the prior art at
 21 Figures 1 – 9, and that the cams which vary the gripping force are merely replaced with cam
 22 assemblies that vary the gripping force during and after the pitting operation. However, in view
 23 of the admitted prior art before the examiner, Claims 5 and 12 are rendered obvious in view of
 24 the Sunsweet Patent. The Sunsweet Patent discloses a prune pitting apparatus which specifically
 25 identifies the advantages of varying the gripping force used to hold the prune during and after the
 26 pitting operation. In particular, the British Sunsweet patent states that during pitting:

27 As the tip 120a of pitting plunger 120 enters the prune it centres the pit by virtue
 28

1 of its conical shaped surface. Simultaneously, gripping fingers 131 are partially
 2 retracted, thereby allowing the prune to expand. It is to be understood, of course
 3 that the resistance of the pit to be extracted from the flesh will cause an expansion
 4 of the prune, and in order to prevent unnecessary tearing of the prune flesh it must
 5 be allowed to expand. . . . After the prune has been pitted, the pitting plunger is
 6 retracted, but not until the bucket has been pivoted outwards slightly so as to
 7 contact the prune with its bottom finger 118, as shown in Fig. 22. At this time,
 8 the gripping fingers 131 have been moved to fully retracted positions. (Page 6,
 9 Col. 37-57.)
 10

7 In view of the Sunsweet Patent, asserted Claims 5 and 12 are classic instances of merely
 8 combining prior art elements according to known methods to yield predictable results in the
 9 simple mechanical arts. Accordingly, Claims 5 and 12 would have been obvious to a person
 10 having ordinary skill in the art, and are therefore invalid.

11 As with the aforementioned combination of well known methods and apparatus, there are
 12 numerous other combinations of numerous pieces of prior art (including prior art that disclosed
 13 intermittent pitting machines, variable grip holders for the articles being pitted, and which vary
 14 the gripping force in relation to the pitting operation itself) which render the Asserted Claims 5
 15 and 12 obvious. Examples of these additional prior art combinations include:

16 (1) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 17 664,500 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 18 employing means for applying a variable gripping force on the fruit during and after the pitting
 19 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 21 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 22 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 23 are used for pitting. In combination, the above identified prior art references merely use those
 24 familiar elements for their primary or well known purposes in a manner well within the ordinary
 25 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 27 the art would have been familiar with all the claim elements that the patentee used to distinguish
 28 some of the prior art during prosecution.

(2) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

664,500 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(3) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

664,500 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No.2,413,861 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(4) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 664,500 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 2 employing means for applying a variable gripping force on the fruit during and after the pitting
 3 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 5 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
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 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish
 12 some of the prior art during prosecution.

13 (5) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 14 664,500 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 15 employing means for applying a variable gripping force on the fruit during and after the pitting
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 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 18 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
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 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish
 25 some of the prior art during prosecution.

26 (6) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 27 664,500 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 28

1 employing means for applying a variable gripping force on the fruit during and after the pitting
2 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
4 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
6 are used for pitting. In combination, the above identified prior art references merely use those
7 familiar elements for their primary or well known purposes in a manner well within the ordinary
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
10 the art would have been familiar with all the claim elements that the patentee used to distinguish
11 some of the prior art during prosecution.

12 (7) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
13 664,500 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
14 employing means for applying a variable gripping force on the fruit during and after the pitting
15 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
17 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
19 are used for pitting. In combination, the above identified prior art references merely use those
20 familiar elements for their primary or well known purposes in a manner well within the ordinary
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
23 the art would have been familiar with all the claim elements that the patentee used to distinguish
24 some of the prior art during prosecution.

25 (8) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
26 664,500 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
27 employing means for applying a variable gripping force on the fruit during and after the pitting
28

1 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 3 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
 4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 5 are used for pitting. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (9) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 664,500 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (10) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 664,500 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 2 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 4 are used for pitting. In combination, the above identified prior art references merely use those
 5 familiar elements for their primary or well known purposes in a manner well within the ordinary
 6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 8 the art would have been familiar with all the claim elements that the patentee used to distinguish
 9 some of the prior art during prosecution.

10 (11) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 11 664,500 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 12 employing means for applying a variable gripping force on the fruit during and after the pitting
 13 operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting
 14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 15 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 17 are used for pitting. In combination, the above identified prior art references merely use those
 18 familiar elements for their primary or well known purposes in a manner well within the ordinary
 19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 21 the art would have been familiar with all the claim elements that the patentee used to distinguish
 22 some of the prior art during prosecution.

23 (12) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 24 664,500 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 25 employing means for applying a variable gripping force on the fruit during and after the pitting
 26 operation to more efficiently conduct pitting. Pat No.664,500 discloses an intermittent pitting
 27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 28

1 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
3 are used for pitting. In combination, the above identified prior art references merely use those
4 familiar elements for their primary or well known purposes in a manner well within the ordinary
5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
7 the art would have been familiar with all the claim elements that the patentee used to distinguish
8 some of the prior art during prosecution.

9 (13) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
10 664,500 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
11 employing means for applying a variable gripping force on the fruit during and after the pitting
12 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
14 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
16 are used for pitting. In combination, the above identified prior art references merely use those
17 familiar elements for their primary or well known purposes in a manner well within the ordinary
18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
20 the art would have been familiar with all the claim elements that the patentee used to distinguish
21 some of the prior art during prosecution.

22 (14) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
23 664,500 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
24 employing means for applying a variable gripping force on the fruit during and after the pitting
25 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
27 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 2 are used for pitting. In combination, the above identified prior art references merely use those
 3 familiar elements for their primary or well known purposes in a manner well within the ordinary
 4 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 6 the art would have been familiar with all the claim elements that the patentee used to distinguish
 7 some of the prior art during prosecution.

8 (15) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 9 664,500 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 10 employing means for applying a variable gripping force on the fruit during and after the pitting
 11 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 13 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 15 are used for pitting. In combination, the above identified prior art references merely use those
 16 familiar elements for their primary or well known purposes in a manner well within the ordinary
 17 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 19 the art would have been familiar with all the claim elements that the patentee used to distinguish
 20 some of the prior art during prosecution.

21 (16) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 22 2,558,205 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 23 employing means for applying a variable gripping force on the fruit during and after the pitting
 24 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
 25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 26 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 28

1 are used for pitting. In combination, the above identified prior art references merely use those
 2 familiar elements for their primary or well known purposes in a manner well within the ordinary
 3 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 5 the art would have been familiar with all the claim elements that the patentee used to distinguish
 6 some of the prior art during prosecution.

7 (17) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 8 2,558,205 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
 9 employing means for applying a variable gripping force on the fruit during and after the pitting
 10 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
 11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 12 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 14 are used for pitting. In combination, the above identified prior art references merely use those
 15 familiar elements for their primary or well known purposes in a manner well within the ordinary
 16 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 18 the art would have been familiar with all the claim elements that the patentee used to distinguish
 19 some of the prior art during prosecution.

20 (18) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 21 2,558,205 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 22 employing means for applying a variable gripping force on the fruit during and after the pitting
 23 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
 24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 25 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 27 are used for pitting. In combination, the above identified prior art references merely use those
 28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
4 the art would have been familiar with all the claim elements that the patentee used to distinguish
5 some of the prior art during prosecution.

6 (19) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
7 2,558,205 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
8 employing means for applying a variable gripping force on the fruit during and after the pitting
9 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
11 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
13 are used for pitting. In combination, the above identified prior art references merely use those
14 familiar elements for their primary or well known purposes in a manner well within the ordinary
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
17 the art would have been familiar with all the claim elements that the patentee used to distinguish
18 some of the prior art during prosecution.

19 (20) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
20 2,558,205 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
21 employing means for applying a variable gripping force on the fruit during and after the pitting
22 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
24 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
26 are used for pitting. In combination, the above identified prior art references merely use those
27 familiar elements for their primary or well known purposes in a manner well within the ordinary
28

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish
 4 some of the prior art during prosecution.

5 (21) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 6 2,558,205 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 7 employing means for applying a variable gripping force on the fruit during and after the pitting
 8 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 10 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 12 are used for pitting. In combination, the above identified prior art references merely use those
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish
 17 some of the prior art during prosecution.

18 (22) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 19 2,558,205 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 20 employing means for applying a variable gripping force on the fruit during and after the pitting
 21 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
 22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 23 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 24 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 25 are used for pitting. In combination, the above identified prior art references merely use those
 26 familiar elements for their primary or well known purposes in a manner well within the ordinary
 27 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 28

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
2 the art would have been familiar with all the claim elements that the patentee used to distinguish
3 some of the prior art during prosecution.

4 (23) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
5 2,558,205 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
6 employing means for applying a variable gripping force on the fruit during and after the pitting
7 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
9 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
11 are used for pitting. In combination, the above identified prior art references merely use those
12 familiar elements for their primary or well known purposes in a manner well within the ordinary
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
15 the art would have been familiar with all the claim elements that the patentee used to distinguish
16 some of the prior art during prosecution.

17 (24) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
18 2,558,205 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
19 employing means for applying a variable gripping force on the fruit during and after the pitting
20 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
22 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
24 are used for pitting. In combination, the above identified prior art references merely use those
25 familiar elements for their primary or well known purposes in a manner well within the ordinary
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
28

1 the art would have been familiar with all the claim elements that the patentee used to distinguish
2 some of the prior art during prosecution.
3

4 (25) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
5 2,558,205 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
6 employing means for applying a variable gripping force on the fruit during and after the pitting
7 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
9 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
11 are used for pitting. In combination, the above identified prior art references merely use those
12 familiar elements for their primary or well known purposes in a manner well within the ordinary
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
15 the art would have been familiar with all the claim elements that the patentee used to distinguish
16 some of the prior art during prosecution.

17 (26) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
18 2,558,205 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
19 employing means for applying a variable gripping force on the fruit during and after the pitting
20 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
22 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
24 are used for pitting. In combination, the above identified prior art references merely use those
25 familiar elements for their primary or well known purposes in a manner well within the ordinary
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
28 the art would have been familiar with all the claim elements that the patentee used to distinguish

1 some of the prior art during prosecution.

2 (27) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
3 2,558,205 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
4 employing means for applying a variable gripping force on the fruit during and after the pitting
5 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
7 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
9 are used for pitting. In combination, the above identified prior art references merely use those
10 familiar elements for their primary or well known purposes in a manner well within the ordinary
11 level of skill in the art. Since there were a finite number of predictable solutions, a person of
12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
13 the art would have been familiar with all the claim elements that the patentee used to distinguish
14 some of the prior art during prosecution.

15 (28) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
16 2,558,205 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
17 employing means for applying a variable gripping force on the fruit during and after the pitting
18 operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting
19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
20 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
22 are used for pitting. In combination, the above identified prior art references merely use those
23 familiar elements for their primary or well known purposes in a manner well within the ordinary
24 level of skill in the art. Since there were a finite number of predictable solutions, a person of
25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
26 the art would have been familiar with all the claim elements that the patentee used to distinguish
27 some of the prior art during prosecution.

(29) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

2558,205 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(30) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

2,558,205 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(31) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 3,318,349 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
2 employing means for applying a variable gripping force on the fruit during and after the pitting
3 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
5 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
7 are used for pitting. In combination, the above identified prior art references merely use those
8 familiar elements for their primary or well known purposes in a manner well within the ordinary
9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
11 the art would have been familiar with all the claim elements that the patentee used to distinguish
12 some of the prior art during prosecution.

13 (32) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
14 3,318,349 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
15 employing means for applying a variable gripping force on the fruit during and after the pitting
16 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
18 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
20 are used for pitting. In combination, the above identified prior art references merely use those
21 familiar elements for their primary or well known purposes in a manner well within the ordinary
22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
24 the art would have been familiar with all the claim elements that the patentee used to distinguish
25 some of the prior art during prosecution.

26 (33) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
27 3,318,349 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
28

1 employing means for applying a variable gripping force on the fruit during and after the pitting
 2 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 4 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 6 are used for pitting. In combination, the above identified prior art references merely use those
 7 familiar elements for their primary or well known purposes in a manner well within the ordinary
 8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 10 the art would have been familiar with all the claim elements that the patentee used to distinguish
 11 some of the prior art during prosecution.

12 (34) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 13 3,318,349 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 14 employing means for applying a variable gripping force on the fruit during and after the pitting
 15 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 17 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 19 are used for pitting. In combination, the above identified prior art references merely use those
 20 familiar elements for their primary or well known purposes in a manner well within the ordinary
 21 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 23 the art would have been familiar with all the claim elements that the patentee used to distinguish
 24 some of the prior art during prosecution.

25 (35) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 26 3,318,349 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 27 employing means for applying a variable gripping force on the fruit during and after the pitting

1 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
3 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
5 are used for pitting. In combination, the above identified prior art references merely use those
6 familiar elements for their primary or well known purposes in a manner well within the ordinary
7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
9 the art would have been familiar with all the claim elements that the patentee used to distinguish
10 some of the prior art during prosecution.

11 (36) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
12 3,318,349 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
13 employing means for applying a variable gripping force on the fruit during and after the pitting
14 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
16 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
18 are used for pitting. In combination, the above identified prior art references merely use those
19 familiar elements for their primary or well known purposes in a manner well within the ordinary
20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
22 the art would have been familiar with all the claim elements that the patentee used to distinguish
23 some of the prior art during prosecution.

24 (37) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
25 3,318,349 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
26 employing means for applying a variable gripping force on the fruit during and after the pitting
27 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
2 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
4 are used for pitting. In combination, the above identified prior art references merely use those
5 familiar elements for their primary or well known purposes in a manner well within the ordinary
6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
8 the art would have been familiar with all the claim elements that the patentee used to distinguish
9 some of the prior art during prosecution.

10 (38) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
11 3,318,349 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
12 employing means for applying a variable gripping force on the fruit during and after the pitting
13 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
15 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
17 are used for pitting. In combination, the above identified prior art references merely use those
18 familiar elements for their primary or well known purposes in a manner well within the ordinary
19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
21 the art would have been familiar with all the claim elements that the patentee used to distinguish
22 some of the prior art during prosecution.

23 (39) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
24 3,318,349 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
25 employing means for applying a variable gripping force on the fruit during and after the pitting
26 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
28

1 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 (40) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 10 3,318,349 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 11 employing means for applying a variable gripping force on the fruit during and after the pitting
 12 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 14 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 16 are used for pitting. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (41) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 23 3,318,349 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 24 employing means for applying a variable gripping force on the fruit during and after the pitting
 25 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 27 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 2 are used for pitting. In combination, the above identified prior art references merely use those
 3 familiar elements for their primary or well known purposes in a manner well within the ordinary
 4 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 6 the art would have been familiar with all the claim elements that the patentee used to distinguish
 7 some of the prior art during prosecution.

8 (42) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 9 3,318,349 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 10 employing means for applying a variable gripping force on the fruit during and after the pitting
 11 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 13 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 15 are used for pitting. In combination, the above identified prior art references merely use those
 16 familiar elements for their primary or well known purposes in a manner well within the ordinary
 17 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 19 the art would have been familiar with all the claim elements that the patentee used to distinguish
 20 some of the prior art during prosecution.

21 (43) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 22 3,318,349 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 23 employing means for applying a variable gripping force on the fruit during and after the pitting
 24 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
 25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 26 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 28

1 are used for pitting. In combination, the above identified prior art references merely use those
2 familiar elements for their primary or well known purposes in a manner well within the ordinary
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
5 the art would have been familiar with all the claim elements that the patentee used to distinguish
6 some of the prior art during prosecution.

7 (44) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
8 3,318,349 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
9 employing means for applying a variable gripping force on the fruit during and after the pitting
10 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
12 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
14 are used for pitting. In combination, the above identified prior art references merely use those
15 familiar elements for their primary or well known purposes in a manner well within the ordinary
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
18 the art would have been familiar with all the claim elements that the patentee used to distinguish
19 some of the prior art during prosecution.

20 (45) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
21 3,318,349 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
22 employing means for applying a variable gripping force on the fruit during and after the pitting
23 operation to more efficiently conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
25 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
27 are used for pitting. In combination, the above identified prior art references merely use those
28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
4 the art would have been familiar with all the claim elements that the patentee used to distinguish
5 some of the prior art during prosecution.

6 (46) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
7 2,360,103 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
8 employing means for applying a variable gripping force on the fruit during and after the pitting
9 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
11 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
13 are used for pitting. In combination, the above identified prior art references merely use those
14 familiar elements for their primary or well known purposes in a manner well within the ordinary
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
17 the art would have been familiar with all the claim elements that the patentee used to distinguish
18 some of the prior art during prosecution.

19 (47) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
20 2,360,103 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
21 employing means for applying a variable gripping force on the fruit during and after the pitting
22 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
24 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
26 are used for pitting. In combination, the above identified prior art references merely use those
27 familiar elements for their primary or well known purposes in a manner well within the ordinary
28

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish
 4 some of the prior art during prosecution.

5 (48) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 6 2,360,103 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 7 employing means for applying a variable gripping force on the fruit during and after the pitting
 8 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 10 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 12 are used for pitting. In combination, the above identified prior art references merely use those
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish
 17 some of the prior art during prosecution.

18 (49) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 19 2,360,103 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 20 employing means for applying a variable gripping force on the fruit during and after the pitting
 21 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 23 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 24 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 25 are used for pitting. In combination, the above identified prior art references merely use those
 26 familiar elements for their primary or well known purposes in a manner well within the ordinary
 27 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 28

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
2 the art would have been familiar with all the claim elements that the patentee used to distinguish
3 some of the prior art during prosecution.

4 (50) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
5 2,360,103 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
6 employing means for applying a variable gripping force on the fruit during and after the pitting
7 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
9 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
11 are used for pitting. In combination, the above identified prior art references merely use those
12 familiar elements for their primary or well known purposes in a manner well within the ordinary
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
15 the art would have been familiar with all the claim elements that the patentee used to distinguish
16 some of the prior art during prosecution.

17 (51) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
18 2,360,13 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
19 employing means for applying a variable gripping force on the fruit during and after the pitting
20 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
22 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
24 are used for pitting. In combination, the above identified prior art references merely use those
25 familiar elements for their primary or well known purposes in a manner well within the ordinary
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
28

1 the art would have been familiar with all the claim elements that the patentee used to distinguish
2 some of the prior art during prosecution.
3

4 (52) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
5 2,360,103 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
6 employing means for applying a variable gripping force on the fruit during and after the pitting
7 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
9 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
11 are used for pitting. In combination, the above identified prior art references merely use those
12 familiar elements for their primary or well known purposes in a manner well within the ordinary
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
15 the art would have been familiar with all the claim elements that the patentee used to distinguish
16 some of the prior art during prosecution.

17 (53) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
18 2,360,103 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
19 employing means for applying a variable gripping force on the fruit during and after the pitting
20 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
22 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
24 are used for pitting. In combination, the above identified prior art references merely use those
25 familiar elements for their primary or well known purposes in a manner well within the ordinary
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
28 the art would have been familiar with all the claim elements that the patentee used to distinguish

1 some of the prior art during prosecution.

2 (54) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 3 2,360,103 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 4 employing means for applying a variable gripping force on the fruit during and after the pitting
 5 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 7 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 9 are used for pitting. In combination, the above identified prior art references merely use those
 10 familiar elements for their primary or well known purposes in a manner well within the ordinary
 11 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 13 the art would have been familiar with all the claim elements that the patentee used to distinguish
 14 some of the prior art during prosecution.

15 (55) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 16 2,360,103 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 17 employing means for applying a variable gripping force on the fruit during and after the pitting
 18 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 20 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 22 are used for pitting. In combination, the above identified prior art references merely use those
 23 familiar elements for their primary or well known purposes in a manner well within the ordinary
 24 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 26 the art would have been familiar with all the claim elements that the patentee used to distinguish
 27 some of the prior art during prosecution.

1 (56) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
2 2,360,103 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
3 employing means for applying a variable gripping force on the fruit during and after the pitting
4 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
6 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
7 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
8 are used for pitting. In combination, the above identified prior art references merely use those
9 familiar elements for their primary or well known purposes in a manner well within the ordinary
10 level of skill in the art. Since there were a finite number of predictable solutions, a person of
11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
12 the art would have been familiar with all the claim elements that the patentee used to distinguish
13 some of the prior art during prosecution.

14 (57) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
15 2,360,103 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
16 employing means for applying a variable gripping force on the fruit during and after the pitting
17 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
19 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
20 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
21 are used for pitting. In combination, the above identified prior art references merely use those
22 familiar elements for their primary or well known purposes in a manner well within the ordinary
23 level of skill in the art. Since there were a finite number of predictable solutions, a person of
24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
25 the art would have been familiar with all the claim elements that the patentee used to distinguish
26 some of the prior art during prosecution.

27 (58) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
28

1 2,360,103 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 2 employing means for applying a variable gripping force on the fruit during and after the pitting
 3 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 5 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 7 are used for pitting. In combination, the above identified prior art references merely use those
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish
 12 some of the prior art during prosecution.

13 (59) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 14 2,360,103 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 15 employing means for applying a variable gripping force on the fruit during and after the pitting
 16 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 18 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 20 are used for pitting. In combination, the above identified prior art references merely use those
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish
 25 some of the prior art during prosecution.

26 (60) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 27 2,360,103 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 28

1 employing means for applying a variable gripping force on the fruit during and after the pitting
2 operation to more efficiently conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting
3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
4 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
6 are used for pitting. In combination, the above identified prior art references merely use those
7 familiar elements for their primary or well known purposes in a manner well within the ordinary
8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
10 the art would have been familiar with all the claim elements that the patentee used to distinguish
11 some of the prior art during prosecution.

12 (61) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
13 1,443,621 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
14 employing means for applying a variable gripping force on the fruit during and after the pitting
15 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
17 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
19 are used for pitting. In combination, the above identified prior art references merely use those
20 familiar elements for their primary or well known purposes in a manner well within the ordinary
21 level of skill in the art. Since there were a finite number of predictable solutions, a person of
22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
23 the art would have been familiar with all the claim elements that the patentee used to distinguish
24 some of the prior art during prosecution.

25 (62) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
26 1,443,621 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
27 employing means for applying a variable gripping force on the fruit during and after the pitting
28

1 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 3 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 5 are used for pitting. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (63) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 1,443,621 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (64) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 1,443,621 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 2 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 4 are used for pitting. In combination, the above identified prior art references merely use those
 5 familiar elements for their primary or well known purposes in a manner well within the ordinary
 6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 8 the art would have been familiar with all the claim elements that the patentee used to distinguish
 9 some of the prior art during prosecution.

10 (65) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 11 1,443,621 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 12 employing means for applying a variable gripping force on the fruit during and after the pitting
 13 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 15 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
 16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 17 are used for pitting. In combination, the above identified prior art references merely use those
 18 familiar elements for their primary or well known purposes in a manner well within the ordinary
 19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 21 the art would have been familiar with all the claim elements that the patentee used to distinguish
 22 some of the prior art during prosecution.

23 (66) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 24 1,443,612 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 25 employing means for applying a variable gripping force on the fruit during and after the pitting
 26 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 28

1 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 (67) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 10 1,443,621 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 11 employing means for applying a variable gripping force on the fruit during and after the pitting
 12 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 14 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 16 are used for pitting. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (68) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 23 1,443,621 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
 24 employing means for applying a variable gripping force on the fruit during and after the pitting
 25 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 27 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 2 are used for pitting. In combination, the above identified prior art references merely use those
 3 familiar elements for their primary or well known purposes in a manner well within the ordinary
 4 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 6 the art would have been familiar with all the claim elements that the patentee used to distinguish
 7 some of the prior art during prosecution.

8 (69) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 9 1,443,621 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 10 employing means for applying a variable gripping force on the fruit during and after the pitting
 11 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 13 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 15 are used for pitting. In combination, the above identified prior art references merely use those
 16 familiar elements for their primary or well known purposes in a manner well within the ordinary
 17 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 19 the art would have been familiar with all the claim elements that the patentee used to distinguish
 20 some of the prior art during prosecution.

21 (70) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 22 1,443,621 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 23 employing means for applying a variable gripping force on the fruit during and after the pitting
 24 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 26 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 28 are used for pitting. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
 2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 4 the art would have been familiar with all the claim elements that the patentee used to distinguish
 5 some of the prior art during prosecution.

6 (71) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 7 1,443,621 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 8 employing means for applying a variable gripping force on the fruit during and after the pitting
 9 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 11 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 13 are used for pitting. In combination, the above identified prior art references merely use those
 14 familiar elements for their primary or well known purposes in a manner well within the ordinary
 15 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 17 the art would have been familiar with all the claim elements that the patentee used to distinguish
 18 some of the prior art during prosecution.

19 (72) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 20 1,443,621 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 21 employing means for applying a variable gripping force on the fruit during and after the pitting
 22 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 24 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 26 are used for pitting. In combination, the above identified prior art references merely use those
 27 familiar elements for their primary or well known purposes in a manner well within the ordinary
 28 level of skill in the art. Since there were a finite number of predictable solutions, a person of

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 2 the art would have been familiar with all the claim elements that the patentee used to distinguish
 3 some of the prior art during prosecution.

4 (73) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 5 1,443,621 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 6 employing means for applying a variable gripping force on the fruit during and after the pitting
 7 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 9 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 11 are used for pitting. In combination, the above identified prior art references merely use those
 12 familiar elements for their primary or well known purposes in a manner well within the ordinary
 13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 15 the art would have been familiar with all the claim elements that the patentee used to distinguish
 16 some of the prior art during prosecution.

17 (74) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 18 1,443,621 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 19 employing means for applying a variable gripping force on the fruit during and after the pitting
 20 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 22 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 24 are used for pitting. In combination, the above identified prior art references merely use those
 25 familiar elements for their primary or well known purposes in a manner well within the ordinary
 26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 28 the art would have been familiar with all the claim elements that the patentee used to distinguish

1 some of the prior art during prosecution.

2 (75) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 3 1,443,621 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 4 employing means for applying a variable gripping force on the fruit during and after the pitting
 5 operation to more efficiently conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting
 6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 7 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 9 are used for pitting. In combination, the above identified prior art references merely use those
 10 familiar elements for their primary or well known purposes in a manner well within the ordinary
 11 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 13 the art would have been familiar with all the claim elements that the patentee used to distinguish
 14 some of the prior art during prosecution.

15 (76) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 16 3,088,582 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 17 employing means for applying a variable gripping force on the fruit during and after the pitting
 18 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 20 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 22 are used for pitting. In combination, the above identified prior art references merely use those
 23 familiar elements for their primary or well known purposes in a manner well within the ordinary
 24 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 26 the art would have been familiar with all the claim elements that the patentee used to distinguish
 27 some of the prior art during prosecution.

28 (77) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 3,088,582 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
 2 employing means for applying a variable gripping force on the fruit during and after the pitting
 3 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 5 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 7 are used for pitting. In combination, the above identified prior art references merely use those
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish
 12 some of the prior art during prosecution.

13 (78) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 14 3,088,582 and 2,413,861,in combination. The Sunsweet Patent discloses a pitting apparatus
 15 employing means for applying a variable gripping force on the fruit during and after the pitting
 16 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 18 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 20 are used for pitting. In combination, the above identified prior art references merely use those
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish
 25 some of the prior art during prosecution.

26 (79) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 27 3,088,582 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 28 employing means for applying a variable gripping force on the fruit during and after the pitting

1 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 3 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 5 are used for pitting. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (80) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 3,088,582 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (81) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 3,088,582 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 28 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used

1 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 (82) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 10 3,088,582 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 11 employing means for applying a variable gripping force on the fruit during and after the pitting
 12 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 14 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 16 are used for pitting. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (83) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 23 3,088,582 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
 24 employing means for applying a variable gripping force on the fruit during and after the pitting
 25 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 27 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
 28 translating the fruit through the apparatus to the pitting station where pitting plungers of knives

1 are used for pitting. In combination, the above identified prior art references merely use those
 2 familiar elements for their primary or well known purposes in a manner well within the ordinary
 3 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 5 the art would have been familiar with all the claim elements that the patentee used to distinguish
 6 some of the prior art during prosecution.

7 (84) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 8 3,088,582 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 9 employing means for applying a variable gripping force on the fruit during and after the pitting
 10 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 12 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 14 are used for pitting. In combination, the above identified prior art references merely use those
 15 familiar elements for their primary or well known purposes in a manner well within the ordinary
 16 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 18 the art would have been familiar with all the claim elements that the patentee used to distinguish
 19 some of the prior art during prosecution.

20 (85) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 21 3,088,582 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 22 employing means for applying a variable gripping force on the fruit during and after the pitting
 23 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 25 with a variable gripping force pitting apparatus; and Pat No. 3,199,558discloses means for
 26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 27 are used for pitting. In combination, the above identified prior art references merely use those
 28 familiar elements for their primary or well known purposes in a manner well within the ordinary

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish
 4 some of the prior art during prosecution.

5 (86) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 6 3,088,582 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 7 employing means for applying a variable gripping force on the fruit during and after the pitting
 8 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 10 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 12 are used for pitting. In combination, the above identified prior art references merely use those
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish
 17 some of the prior art during prosecution.

18 (87) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 19 3,088,582 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 20 employing means for applying a variable gripping force on the fruit during and after the pitting
 21 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 23 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 24 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 25 are used for pitting. In combination, the above identified prior art references merely use those
 26 familiar elements for their primary or well known purposes in a manner well within the ordinary
 27 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 28 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in

1 the art would have been familiar with all the claim elements that the patentee used to distinguish
 2 some of the prior art during prosecution.
 3

4 (88) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 5 3,088,582 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 6 employing means for applying a variable gripping force on the fruit during and after the pitting
 7 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 9 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 10 are used for pitting. In combination, the above identified prior art references merely use those
 11 familiar elements for their primary or well known purposes in a manner well within the ordinary
 12 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 13 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 14 the art would have been familiar with all the claim elements that the patentee used to distinguish
 15 some of the prior art during prosecution.

16 (89) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 17 3,088,582 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 18 employing means for applying a variable gripping force on the fruit during and after the pitting
 19 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 20 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 21 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 22 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 23 are used for pitting. In combination, the above identified prior art references merely use those
 24 familiar elements for their primary or well known purposes in a manner well within the ordinary
 25 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 26 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 27 the art would have been familiar with all the claim elements that the patentee used to distinguish
 28 some of the prior art during prosecution.

1 (90) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 2 3,088,582 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 3 employing means for applying a variable gripping force on the fruit during and after the pitting
 4 operation to more efficiently conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting
 5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 6 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 7 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 8 are used for pitting. In combination, the above identified prior art references merely use those
 9 familiar elements for their primary or well known purposes in a manner well within the ordinary
 10 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 12 the art would have been familiar with all the claim elements that the patentee used to distinguish
 13 some of the prior art during prosecution.

14 (91) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 15 3,291,172 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 16 employing means for applying a variable gripping force on the fruit during and after the pitting
 17 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 19 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 20 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 21 are used for pitting. In combination, the above identified prior art references merely use those
 22 familiar elements for their primary or well known purposes in a manner well within the ordinary
 23 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 25 the art would have been familiar with all the claim elements that the patentee used to distinguish
 26 some of the prior art during prosecution.

27 (92) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 28 3,291,172 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus

1 employing means for applying a variable gripping force on the fruit during and after the pitting
 2 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 4 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 6 are used for pitting. In combination, the above identified prior art references merely use those
 7 familiar elements for their primary or well known purposes in a manner well within the ordinary
 8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 10 the art would have been familiar with all the claim elements that the patentee used to distinguish
 11 some of the prior art during prosecution.

12 (93) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 13 3,291,172 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 14 employing means for applying a variable gripping force on the fruit during and after the pitting
 15 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 17 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 19 are used for pitting. In combination, the above identified prior art references merely use those
 20 familiar elements for their primary or well known purposes in a manner well within the ordinary
 21 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 23 the art would have been familiar with all the claim elements that the patentee used to distinguish
 24 some of the prior art during prosecution.

25 (94) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 26 3,291,172 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 27 employing means for applying a variable gripping force on the fruit during and after the pitting
 28 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 2 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 4 are used for pitting. In combination, the above identified prior art references merely use those
 5 familiar elements for their primary or well known purposes in a manner well within the ordinary
 6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 8 the art would have been familiar with all the claim elements that the patentee used to distinguish
 9 some of the prior art during prosecution.

10 (95) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 11 3,291,172 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 12 employing means for applying a variable gripping force on the fruit during and after the pitting
 13 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 15 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
 16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 17 are used for pitting. In combination, the above identified prior art references merely use those
 18 familiar elements for their primary or well known purposes in a manner well within the ordinary
 19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 21 the art would have been familiar with all the claim elements that the patentee used to distinguish
 22 some of the prior art during prosecution.

23 (96) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 24 3,291,172 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 25 employing means for applying a variable gripping force on the fruit during and after the pitting
 26 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 28 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 2 are used for pitting. In combination, the above identified prior art references merely use those
 3 familiar elements for their primary or well known purposes in a manner well within the ordinary
 4 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 6 the art would have been familiar with all the claim elements that the patentee used to distinguish
 7 some of the prior art during prosecution.

8 (97) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 9 3,291,172 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 10 employing means for applying a variable gripping force on the fruit during and after the pitting
 11 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 13 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 15 are used for pitting. In combination, the above identified prior art references merely use those
 16 familiar elements for their primary or well known purposes in a manner well within the ordinary
 17 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 19 the art would have been familiar with all the claim elements that the patentee used to distinguish
 20 some of the prior art during prosecution.

21 (98) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 22 3,291,172 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
 23 employing means for applying a variable gripping force on the fruit during and after the pitting
 24 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 26 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
 27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 28 are used for pitting. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
 2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 4 the art would have been familiar with all the claim elements that the patentee used to distinguish
 5 some of the prior art during prosecution.

6 (99) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 7 3,291,172 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 8 employing means for applying a variable gripping force on the fruit during and after the pitting
 9 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 11 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 13 are used for pitting. In combination, the above identified prior art references merely use those
 14 familiar elements for their primary or well known purposes in a manner well within the ordinary
 15 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 17 the art would have been familiar with all the claim elements that the patentee used to distinguish
 18 some of the prior art during prosecution.

19 (100) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 20 3,291,172 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 21 employing means for applying a variable gripping force on the fruit during and after the pitting
 22 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 24 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 26 are used for pitting. In combination, the above identified prior art references merely use those
 27 familiar elements for their primary or well known purposes in a manner well within the ordinary
 28 level of skill in the art. Since there were a finite number of predictable solutions, a person of

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 2 the art would have been familiar with all the claim elements that the patentee used to distinguish
 3 some of the prior art during prosecution.

4 (101) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 5 3,291,172 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 6 employing means for applying a variable gripping force on the fruit during and after the pitting
 7 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 9 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 11 are used for pitting. In combination, the above identified prior art references merely use those
 12 familiar elements for their primary or well known purposes in a manner well within the ordinary
 13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 15 the art would have been familiar with all the claim elements that the patentee used to distinguish
 16 some of the prior art during prosecution.

17 (102) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 18 3,291,172 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 19 employing means for applying a variable gripping force on the fruit during and after the pitting
 20 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 22 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 24 are used for pitting. In combination, the above identified prior art references merely use those
 25 familiar elements for their primary or well known purposes in a manner well within the ordinary
 26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 28 the art would have been familiar with all the claim elements that the patentee used to distinguish

1 some of the prior art during prosecution.

2 (103) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 3 3,291,172 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 4 employing means for applying a variable gripping force on the fruit during and after the pitting
 5 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 6 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 7 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 8 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 9 are used for pitting. In combination, the above identified prior art references merely use those
 10 familiar elements for their primary or well known purposes in a manner well within the ordinary
 11 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 12 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 13 the art would have been familiar with all the claim elements that the patentee used to distinguish
 14 some of the prior art during prosecution.

15 (104) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 16 3,291,172 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 17 employing means for applying a variable gripping force on the fruit during and after the pitting
 18 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 19 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 20 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 21 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 22 are used for pitting. In combination, the above identified prior art references merely use those
 23 familiar elements for their primary or well known purposes in a manner well within the ordinary
 24 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 26 the art would have been familiar with all the claim elements that the patentee used to distinguish
 27 some of the prior art during prosecution.

28 (105) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 3,291,172 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 2 employing means for applying a variable gripping force on the fruit during and after the pitting
 3 operation to more efficiently conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 5 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 7 are used for pitting. In combination, the above identified prior art references merely use those
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish
 12 some of the prior art during prosecution.

13 (106) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 14 4,009,650 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 15 employing means for applying a variable gripping force on the fruit during and after the pitting
 16 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 18 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 20 are used for pitting. In combination, the above identified prior art references merely use those
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish
 25 some of the prior art during prosecution.

26 (107) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 27 4,009,650 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
 28 employing means for applying a variable gripping force on the fruit during and after the pitting

1 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 3 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 5 are used for pitting. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (108) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 4,009,650 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (109) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 4,009,650 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 28 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used

1 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 (110) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 10 4,009,650 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 11 employing means for applying a variable gripping force on the fruit during and after the pitting
 12 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 14 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
 15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 16 are used for pitting. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (111) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 23 4,009,650 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 24 employing means for applying a variable gripping force on the fruit during and after the pitting
 25 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 27 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for
 28 translating the fruit through the apparatus to the pitting station where pitting plungers of knives

1 are used for pitting. In combination, the above identified prior art references merely use those
 2 familiar elements for their primary or well known purposes in a manner well within the ordinary
 3 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 5 the art would have been familiar with all the claim elements that the patentee used to distinguish
 6 some of the prior art during prosecution.

7 (112) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 8 4,009,650 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 9 employing means for applying a variable gripping force on the fruit during and after the pitting
 10 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 12 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 14 are used for pitting. In combination, the above identified prior art references merely use those
 15 familiar elements for their primary or well known purposes in a manner well within the ordinary
 16 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 18 the art would have been familiar with all the claim elements that the patentee used to distinguish
 19 some of the prior art during prosecution.

20 (113) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 21 4,009,650 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
 22 employing means for applying a variable gripping force on the fruit during and after the pitting
 23 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 25 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
 26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 27 are used for pitting. In combination, the above identified prior art references merely use those
 28 familiar elements for their primary or well known purposes in a manner well within the ordinary

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish
 4 some of the prior art during prosecution.

5 (114) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 6 4,009,650 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 7 employing means for applying a variable gripping force on the fruit during and after the pitting
 8 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 10 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 12 are used for pitting. In combination, the above identified prior art references merely use those
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish
 17 some of the prior art during prosecution.

18 (115) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent
 19 Nos. 4,009,650 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting
 20 apparatus employing means for applying a variable gripping force on the fruit during and after
 21 the pitting operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an
 22 intermittent pitting apparatus, which a person of ordinary skill in the art would understand is
 23 adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,199,558
 24 discloses means for translating the fruit through the apparatus to the pitting station where pitting
 25 plungers of knives are used for pitting. In combination, the above identified prior art references
 26 merely use those familiar elements for their primary or well known purposes in a manner well
 27 within the ordinary level of skill in the art. Since there were a finite number of predictable
 28 solutions, a person of ordinary skill in the art had good reason to pursue the known options.

1 Indeed, a person skilled in the art would have been familiar with all the claim elements that the
 2 patentee used to distinguish some of the prior art during prosecution.
 3

4 (116) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 5 4,009,650 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 6 employing means for applying a variable gripping force on the fruit during and after the pitting
 7 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 9 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 11 are used for pitting. In combination, the above identified prior art references merely use those
 12 familiar elements for their primary or well known purposes in a manner well within the ordinary
 13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 15 the art would have been familiar with all the claim elements that the patentee used to distinguish
 16 some of the prior art during prosecution.

17 (117) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 18 4,009,650 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 19 employing means for applying a variable gripping force on the fruit during and after the pitting
 20 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 22 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 24 are used for pitting. In combination, the above identified prior art references merely use those
 25 familiar elements for their primary or well known purposes in a manner well within the ordinary
 26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 28 the art would have been familiar with all the claim elements that the patentee used to distinguish
 some of the prior art during prosecution.

1 (118) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 2 4,009,650 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 3 employing means for applying a variable gripping force on the fruit during and after the pitting
 4 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 5 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 6 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 7 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 8 are used for pitting. In combination, the above identified prior art references merely use those
 9 familiar elements for their primary or well known purposes in a manner well within the ordinary
 10 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 11 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 12 the art would have been familiar with all the claim elements that the patentee used to distinguish
 13 some of the prior art during prosecution.

14 (119) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 15 4,009,650 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 16 employing means for applying a variable gripping force on the fruit during and after the pitting
 17 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 18 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 19 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 20 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 21 are used for pitting. In combination, the above identified prior art references merely use those
 22 familiar elements for their primary or well known purposes in a manner well within the ordinary
 23 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 24 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 25 the art would have been familiar with all the claim elements that the patentee used to distinguish
 26 some of the prior art during prosecution.

27 (120) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 28 4,009,650 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus

1 employing means for applying a variable gripping force on the fruit during and after the pitting
 2 operation to more efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting
 3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 4 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 6 are used for pitting. In combination, the above identified prior art references merely use those
 7 familiar elements for their primary or well known purposes in a manner well within the ordinary
 8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 10 the art would have been familiar with all the claim elements that the patentee used to distinguish
 11 some of the prior art during prosecution.

12 (121) The ‘949 patent is obvious in view of Patent No. 3,556,281 (the “Margaroli
 13 Patent”) and Patent No. 664,500, in combination. The Margaroli Patent discloses a pitting
 14 apparatus employing means for applying a variable gripping force on the fruit during the pitting
 15 operation to more efficiently conduct pitting. Pat No. 664,500 discloses an intermittent pitting
 16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 17 with a variable gripping force pitting apparatus. In combination, the above identified prior art
 18 references merely use those familiar elements for their primary or well known purposes in a
 19 manner well within the ordinary level of skill in the art. Since there were a finite number of
 20 predictable solutions, a person of ordinary skill in the art had good reason to pursue the known
 21 options. Indeed, a person skilled in the art would have been familiar with all the claim elements
 22 that the patentee used to distinguish some of the prior art during prosecution.

23 (122) The ‘949 patent is obvious in view of the Margaroli Patent and Patent No.
 24 2,558,205, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 25 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 26 conduct pitting. Pat No. 2,558,205 discloses an intermittent pitting apparatus, which a person of
 27 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 28 pitting apparatus. In combination, the above identified prior art references merely use those

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
 2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 4 the art would have been familiar with all the claim elements that the patentee used to distinguish
 5 some of the prior art during prosecution.

6 (123) The '949 patent is obvious in view of the Margaroli Patent and Patent No.
 7 3,318,349, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 8 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 9 conduct pitting. Pat No. 3,318,349 discloses an intermittent pitting apparatus, which a person of
 10 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 11 pitting apparatus. In combination, the above identified prior art references merely use those
 12 familiar elements for their primary or well known purposes in a manner well within the ordinary
 13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 15 the art would have been familiar with all the claim elements that the patentee used to distinguish
 16 some of the prior art during prosecution.

17 (124) The '949 patent is obvious in view of the Margaroli Patent and Patent No.
 18 2,360,103, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 19 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 20 conduct pitting. Pat No. 2,360,103 discloses an intermittent pitting apparatus, which a person of
 21 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 22 pitting apparatus. In combination, the above identified prior art references merely use those
 23 familiar elements for their primary or well known purposes in a manner well within the ordinary
 24 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 25 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 26 the art would have been familiar with all the claim elements that the patentee used to distinguish
 27 some of the prior art during prosecution.

28 (125) The '949 patent is obvious in view of the Margaroli Patent and Patent No.

1 1,443,624, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 2 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 3 conduct pitting. Pat No. 1,443,621 discloses an intermittent pitting apparatus, which a person of
 4 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 5 pitting apparatus. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (126) The '949 patent is obvious in view of the Margaroli Patent and Patent No.
 12 3,088,582, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 13 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 14 conduct pitting. Pat No. 3,088,582 discloses an intermittent pitting apparatus, which a person of
 15 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 16 pitting apparatus. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (127) The '949 patent is obvious in view of the Margaroli Patent and Patent No.
 23 3,291,172, in combination. The Margaroli Patent discloses a pitting apparatus employing means
 24 for applying a variable gripping force on the fruit during the pitting operation to more efficiently
 25 conduct pitting. Pat No. 3,291,172 discloses an intermittent pitting apparatus, which a person of
 26 ordinary skill in the art would understand is adaptable to be used with a variable gripping force
 27 pitting apparatus. In combination, the above identified prior art references merely use those
 28 familiar elements for their primary or well known purposes in a manner well within the ordinary

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
3 the art would have been familiar with all the claim elements that the patentee used to distinguish
4 some of the prior art during prosecution.

5 (128) The ‘949 patent is obvious in view of the Margaroli Patent and Patent
6 No. 4,009,650, in combination. The Margaroli Patent discloses a pitting apparatus employing
7 means for applying a variable gripping force on the fruit during the pitting operation to more
8 efficiently conduct pitting. Pat No. 4,009,650 discloses an intermittent pitting apparatus, which a
9 person of ordinary skill in the art would understand is adaptable to be used with a variable
10 gripping force pitting apparatus. In combination, the above identified prior art references merely
11 use those familiar elements for their primary or well known purposes in a manner well within the
12 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a
13 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person
14 skilled in the art would have been familiar with all the claim elements that the patentee used to
15 distinguish some of the prior art during prosecution.

16 (129) The ‘949 patent is obvious in view of the Margaroli Patent and Patent
17 No. 1,071,333, in combination. The Margaroli Patent discloses a pitting apparatus employing
18 means for applying a variable gripping force on the fruit during the pitting operation to more
19 efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting apparatus, which a
20 person of ordinary skill in the art would understand is adaptable to be used with a variable
21 gripping force pitting apparatus. In combination, the above identified prior art references merely
22 use those familiar elements for their primary or well known purposes in a manner well within the
23 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a
24 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person
25 skilled in the art would have been familiar with all the claim elements that the patentee used to
26 distinguish some of the prior art during prosecution.

27 (130) The ‘949 patent is obvious in view of the Margaroli Patent and Patent
28

1 No. 5,577,439, in combination. The Margaroli Patent discloses a pitting apparatus employing
 2 means for applying a variable gripping force on the fruit during the pitting operation to more
 3 efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a
 4 person of ordinary skill in the art would understand is adaptable to be used with a variable
 5 gripping force pitting apparatus. In combination, the above identified prior art references merely
 6 use those familiar elements for their primary or well known purposes in a manner well within the
 7 ordinary level of skill in the art. Since there were a finite number of predictable solutions, a
 8 person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person
 9 skilled in the art would have been familiar with all the claim elements that the patentee used to
 10 distinguish some of the prior art during prosecution.

11 (131) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 1,071,333 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (132) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 1,071,333 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 2 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 4 are used for pitting. In combination, the above identified prior art references merely use those
 5 familiar elements for their primary or well known purposes in a manner well within the ordinary
 6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 8 the art would have been familiar with all the claim elements that the patentee used to distinguish
 9 some of the prior art during prosecution.

10 (133) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 11 1,071,333 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
 12 employing means for applying a variable gripping force on the fruit during and after the pitting
 13 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 15 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
 16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 17 are used for pitting. In combination, the above identified prior art references merely use those
 18 familiar elements for their primary or well known purposes in a manner well within the ordinary
 19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 21 the art would have been familiar with all the claim elements that the patentee used to distinguish
 22 some of the prior art during prosecution.

23 (134) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 24 1,071,333 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
 25 employing means for applying a variable gripping force on the fruit during and after the pitting
 26 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 28

1 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 (135) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 10 1,071,333 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus
 11 employing means for applying a variable gripping force on the fruit during and after the pitting
 12 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 13 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 14 with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for
 15 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 16 are used for pitting. In combination, the above identified prior art references merely use those
 17 familiar elements for their primary or well known purposes in a manner well within the ordinary
 18 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 19 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 20 the art would have been familiar with all the claim elements that the patentee used to distinguish
 21 some of the prior art during prosecution.

22 (136) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 23 1,071,333 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus
 24 employing means for applying a variable gripping force on the fruit during and after the pitting
 25 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 26 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 27 with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for

1 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
2 are used for pitting. In combination, the above identified prior art references merely use those
3 familiar elements for their primary or well known purposes in a manner well within the ordinary
4 level of skill in the art. Since there were a finite number of predictable solutions, a person of
5 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
6 the art would have been familiar with all the claim elements that the patentee used to distinguish
7 some of the prior art during prosecution.

8 (137) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
9 1,071,333 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
10 employing means for applying a variable gripping force on the fruit during and after the pitting
11 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
12 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
13 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
14 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
15 are used for pitting. In combination, the above identified prior art references merely use those
16 familiar elements for their primary or well known purposes in a manner well within the ordinary
17 level of skill in the art. Since there were a finite number of predictable solutions, a person of
18 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
19 the art would have been familiar with all the claim elements that the patentee used to distinguish
20 some of the prior art during prosecution.

21 (138) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
22 1,071,333 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
23 employing means for applying a variable gripping force on the fruit during and after the pitting
24 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
25 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
26 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
27 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
28

1 are used for pitting. In combination, the above identified prior art references merely use those
2 familiar elements for their primary or well known purposes in a manner well within the ordinary
3 level of skill in the art. Since there were a finite number of predictable solutions, a person of
4 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
5 the art would have been familiar with all the claim elements that the patentee used to distinguish
6 some of the prior art during prosecution.

7 (139) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
8 1,071,333 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
9 employing means for applying a variable gripping force on the fruit during and after the pitting
10 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
11 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
12 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
13 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
14 are used for pitting. In combination, the above identified prior art references merely use those
15 familiar elements for their primary or well known purposes in a manner well within the ordinary
16 level of skill in the art. Since there were a finite number of predictable solutions, a person of
17 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
18 the art would have been familiar with all the claim elements that the patentee used to distinguish
19 some of the prior art during prosecution.

20 (140) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
21 1,071,333 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
22 employing means for applying a variable gripping force on the fruit during and after the pitting
23 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
24 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
25 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
26 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
27 are used for pitting. In combination, the above identified prior art references merely use those
28

1 familiar elements for their primary or well known purposes in a manner well within the ordinary
2 level of skill in the art. Since there were a finite number of predictable solutions, a person of
3 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
4 the art would have been familiar with all the claim elements that the patentee used to distinguish
5 some of the prior art during prosecution.

6 (141) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
7 1,071,333 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
8 employing means for applying a variable gripping force on the fruit during and after the pitting
9 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
10 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
11 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
12 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
13 are used for pitting. In combination, the above identified prior art references merely use those
14 familiar elements for their primary or well known purposes in a manner well within the ordinary
15 level of skill in the art. Since there were a finite number of predictable solutions, a person of
16 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
17 the art would have been familiar with all the claim elements that the patentee used to distinguish
18 some of the prior art during prosecution.

19 (142) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
20 1,071,333 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
21 employing means for applying a variable gripping force on the fruit during and after the pitting
22 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
23 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
24 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
25 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
26 are used for pitting. In combination, the above identified prior art references merely use those
27 familiar elements for their primary or well known purposes in a manner well within the ordinary
28

1 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 2 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 3 the art would have been familiar with all the claim elements that the patentee used to distinguish
 4 some of the prior art during prosecution.

5 (143) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 6 1,071,333 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 7 employing means for applying a variable gripping force on the fruit during and after the pitting
 8 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 9 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 10 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 11 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 12 are used for pitting. In combination, the above identified prior art references merely use those
 13 familiar elements for their primary or well known purposes in a manner well within the ordinary
 14 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 15 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 16 the art would have been familiar with all the claim elements that the patentee used to distinguish
 17 some of the prior art during prosecution.

18 (144) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 19 1,071,333 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 20 employing means for applying a variable gripping force on the fruit during and after the pitting
 21 operation to more efficiently conduct pitting. Pat No. 1,071,333 discloses an intermittent pitting
 22 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 23 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 24 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 25 are used for pitting. In combination, the above identified prior art references merely use those
 26 familiar elements for their primary or well known purposes in a manner well within the ordinary
 27 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 28

1 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 2 the art would have been familiar with all the claim elements that the patentee used to distinguish
 3 some of the prior art during prosecution.

4 (145) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 5 5,577,439 and 3,556,281, in combination. The Sunsweet Patent discloses a pitting apparatus
 6 employing means for applying a variable gripping force on the fruit during and after the pitting
 7 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 9 with a variable gripping force pitting apparatus; and Pat No. 3,556,281 discloses means for
 10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 11 are used for pitting. In combination, the above identified prior art references merely use those
 12 familiar elements for their primary or well known purposes in a manner well within the ordinary
 13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 15 the art would have been familiar with all the claim elements that the patentee used to distinguish
 16 some of the prior art during prosecution.

17 (146) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 18 5,577,439 and 4,122,765, in combination. The Sunsweet Patent discloses a pitting apparatus
 19 employing means for applying a variable gripping force on the fruit during and after the pitting
 20 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 22 with a variable gripping force pitting apparatus; and Pat No. 4,122,765 discloses means for
 23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 24 are used for pitting. In combination, the above identified prior art references merely use those
 25 familiar elements for their primary or well known purposes in a manner well within the ordinary
 26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 28

1 the art would have been familiar with all the claim elements that the patentee used to distinguish
2 some of the prior art during prosecution.
3

4 (147) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
5 5,577,439 and 2,413,861, in combination. The Sunsweet Patent discloses a pitting apparatus
6 employing means for applying a variable gripping force on the fruit during and after the pitting
7 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
8 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
9 with a variable gripping force pitting apparatus; and Pat No. 2,413,861 discloses means for
10 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
11 are used for pitting. In combination, the above identified prior art references merely use those
12 familiar elements for their primary or well known purposes in a manner well within the ordinary
13 level of skill in the art. Since there were a finite number of predictable solutions, a person of
14 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
15 the art would have been familiar with all the claim elements that the patentee used to distinguish
16 some of the prior art during prosecution.

17 (148) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
18 5,577,439 and 2,265,515, in combination. The Sunsweet Patent discloses a pitting apparatus
19 employing means for applying a variable gripping force on the fruit during and after the pitting
20 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
21 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
22 with a variable gripping force pitting apparatus; and Pat No. 2,265,515 discloses means for
23 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
24 are used for pitting. In combination, the above identified prior art references merely use those
25 familiar elements for their primary or well known purposes in a manner well within the ordinary
26 level of skill in the art. Since there were a finite number of predictable solutions, a person of
27 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
28 the art would have been familiar with all the claim elements that the patentee used to distinguish
some of the prior art during prosecution.

(149) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 5,577,439 and 3,305,071, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 3,305,071 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

(150) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos. 5,577,439 and 4,096,795, in combination. The Sunsweet Patent discloses a pitting apparatus employing means for applying a variable gripping force on the fruit during and after the pitting operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting apparatus, which a person of ordinary skill in the art would understand is adaptable to be used with a variable gripping force pitting apparatus; and Pat No. 4,096,795 discloses means for translating the fruit through the apparatus to the pitting station where pitting plungers of knives are used for pitting. In combination, the above identified prior art references merely use those familiar elements for their primary or well known purposes in a manner well within the ordinary level of skill in the art. Since there were a finite number of predictable solutions, a person of ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in the art would have been familiar with all the claim elements that the patentee used to distinguish some of the prior art during prosecution.

27 (151) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.

1 5,577,439 and 2,827,088, in combination. The Sunsweet Patent discloses a pitting apparatus
 2 employing means for applying a variable gripping force on the fruit during and after the pitting
 3 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 4 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 5 with a variable gripping force pitting apparatus; and Pat No. 2,827,088 discloses means for
 6 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 7 are used for pitting. In combination, the above identified prior art references merely use those
 8 familiar elements for their primary or well known purposes in a manner well within the ordinary
 9 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 10 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 11 the art would have been familiar with all the claim elements that the patentee used to distinguish
 12 some of the prior art during prosecution.

13 (152) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 14 5,577,439 and 435,629, in combination. The Sunsweet Patent discloses a pitting apparatus
 15 employing means for applying a variable gripping force on the fruit during and after the pitting
 16 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 17 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 18 with a variable gripping force pitting apparatus; and Pat No. 435,629 discloses means for
 19 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 20 are used for pitting. In combination, the above identified prior art references merely use those
 21 familiar elements for their primary or well known purposes in a manner well within the ordinary
 22 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 23 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 24 the art would have been familiar with all the claim elements that the patentee used to distinguish
 25 some of the prior art during prosecution.

26 (153) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 27 5,577,439 and 1,802,973, in combination. The Sunsweet Patent discloses a pitting apparatus
 28

1 employing means for applying a variable gripping force on the fruit during and after the pitting
 2 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 3 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 4 with a variable gripping force pitting apparatus; and Pat No. 1,802,973 discloses means for
 5 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 6 are used for pitting. In combination, the above identified prior art references merely use those
 7 familiar elements for their primary or well known purposes in a manner well within the ordinary
 8 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 9 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 10 the art would have been familiar with all the claim elements that the patentee used to distinguish
 11 some of the prior art during prosecution.

12 (154) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 13 5,577,439 and 3,199,558, in combination. The Sunsweet Patent discloses a pitting apparatus
 14 employing means for applying a variable gripping force on the fruit during and after the pitting
 15 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 16 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 17 with a variable gripping force pitting apparatus; and Pat No. 3,199,558 discloses means for
 18 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 19 are used for pitting. In combination, the above identified prior art references merely use those
 20 familiar elements for their primary or well known purposes in a manner well within the ordinary
 21 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 22 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 23 the art would have been familiar with all the claim elements that the patentee used to distinguish
 24 some of the prior art during prosecution.

25 (155) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 26 5,577,439 and 4,306,649, in combination. The Sunsweet Patent discloses a pitting apparatus
 27 employing means for applying a variable gripping force on the fruit during and after the pitting
 28

1 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 2 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 3 with a variable gripping force pitting apparatus; and Pat No. 4,306,649 discloses means for
 4 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 5 are used for pitting. In combination, the above identified prior art references merely use those
 6 familiar elements for their primary or well known purposes in a manner well within the ordinary
 7 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 8 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 9 the art would have been familiar with all the claim elements that the patentee used to distinguish
 10 some of the prior art during prosecution.

11 (156) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 12 5,577,439 and 2,688,352, in combination. The Sunsweet Patent discloses a pitting apparatus
 13 employing means for applying a variable gripping force on the fruit during and after the pitting
 14 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 15 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 16 with a variable gripping force pitting apparatus; and Pat No. 2,688,352 discloses means for
 17 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 18 are used for pitting. In combination, the above identified prior art references merely use those
 19 familiar elements for their primary or well known purposes in a manner well within the ordinary
 20 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 21 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 22 the art would have been familiar with all the claim elements that the patentee used to distinguish
 23 some of the prior art during prosecution.

24 (157) The ‘949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 25 5,577,439 and 1,071,333, in combination. The Sunsweet Patent discloses a pitting apparatus
 26 employing means for applying a variable gripping force on the fruit during and after the pitting
 27 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 28

1 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 2 with a variable gripping force pitting apparatus; and Pat No. 1,071,333 discloses means for
 3 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 4 are used for pitting. In combination, the above identified prior art references merely use those
 5 familiar elements for their primary or well known purposes in a manner well within the ordinary
 6 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 7 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 8 the art would have been familiar with all the claim elements that the patentee used to distinguish
 9 some of the prior art during prosecution.

10 (158) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 11 5,577,439 and 4,308,292, in combination. The Sunsweet Patent discloses a pitting apparatus
 12 employing means for applying a variable gripping force on the fruit during and after the pitting
 13 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 14 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 15 with a variable gripping force pitting apparatus; and Pat No. 4,308,292 discloses means for
 16 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 17 are used for pitting. In combination, the above identified prior art references merely use those
 18 familiar elements for their primary or well known purposes in a manner well within the ordinary
 19 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 20 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 21 the art would have been familiar with all the claim elements that the patentee used to distinguish
 22 some of the prior art during prosecution.

23 (159) The '949 patent is obvious in view of the Sunsweet Patent, and Patent Nos.
 24 5,577,439 and 548,940, in combination. The Sunsweet Patent discloses a pitting apparatus
 25 employing means for applying a variable gripping force on the fruit during and after the pitting
 26 operation to more efficiently conduct pitting. Pat No. 5,577,439 discloses an intermittent pitting
 27 apparatus, which a person of ordinary skill in the art would understand is adaptable to be used
 28

1 with a variable gripping force pitting apparatus; and Pat No. 548,940 discloses means for
 2 translating the fruit through the apparatus to the pitting station where pitting plungers of knives
 3 are used for pitting. In combination, the above identified prior art references merely use those
 4 familiar elements for their primary or well known purposes in a manner well within the ordinary
 5 level of skill in the art. Since there were a finite number of predictable solutions, a person of
 6 ordinary skill in the art had good reason to pursue the known options. Indeed, a person skilled in
 7 the art would have been familiar with all the claim elements that the patentee used to distinguish
 8 some of the prior art during prosecution.

9 **C. Patent L.R. 3-3(c): Identification of Claim Limitations in Prior Art**

10 Pursuant to Patent L.R. 3-3(c), Defendants provide the charts attached collectively hereto
 11 as **Exhibit A** identifying where specifically in each item of prior art each limitation of each
 12 asserted claim is found, etc. The attached **Exhibit A** charts are incorporated by reference as
 13 though fully set forth herein. Defendants will update the charts identify the Court's construction
of the term "active assembly" by identifying corresponding structure and function in the prior art
within 30 days of the Court's grant of leave to amend its Invalidity Contentions. Additionally,
Defendants reserve the right to identify additional prior art containing corresponding structure
and function with regard to the Court's construction of "active assembly" within the same time
period.

14 **D. Patent L.R. 3-3(d): Other Grounds of Invalidity, etc.**

15 Pursuant to Patent L.R. 3-3(d), Defendants contend that the Asserted Claims of the '949
 16 patent are invalid under 35 U.S.C. § 112 because: (1) the claims are indefinite; (2) the claims are
 17 not enabled; (3) and the claims lack adequate written description. Defendants also contend that
 18 the claims as construed are unpatentable under §101. The Defendants' contentions that the
 19 following claims are invalid under 35 U.S.C. §101 and 112 are made in the alternative, and do
 20 not constitute, and should not be interpreted as, admissions regarding the construction or scope of
 21 the claims of the '949 patent, or that any of the claims of the '949 patent are not anticipated or
 22 rendered obvious by any prior art.

1 **1. 35 U.S.C. § 112, PARAGRAPH 2 – INDEFINITENESS**

2 Under 35 U.S.C. § 112 ¶ 2, “[t]he specification shall conclude with one or more claims
 3 particularly pointing out and distinctly claiming the subject matter which the applicant regards as
 4 his invention.” 35 U.S.C. § 112 ¶ 2. If a claim fails to satisfy the definiteness requirement, it is
 5 invalid. *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004).
 6 “In ruling on a claim of patent indefiniteness, a court must determine whether those skilled in the
 7 art would understand what is claimed when the claim is read in light of the specification.” *Id.*;
 8 *Exxon Research and Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001). “A claim
 9 is indefinite if its legal scope is not clear enough that a person of ordinary skill in the art could
 10 determine whether a particular composition infringes or not.” *Geneva Pharm., Inc. v.*
 11 *GlaxoSmithKline PLC*, 349 F.3d 1373, 1384 (Fed. Cir. 2003); *accord Exxon Research*, 265 F.3d
 12 at 1375.

13 **a. Claim Terms “pitting operation” and “after the pitting operation”**

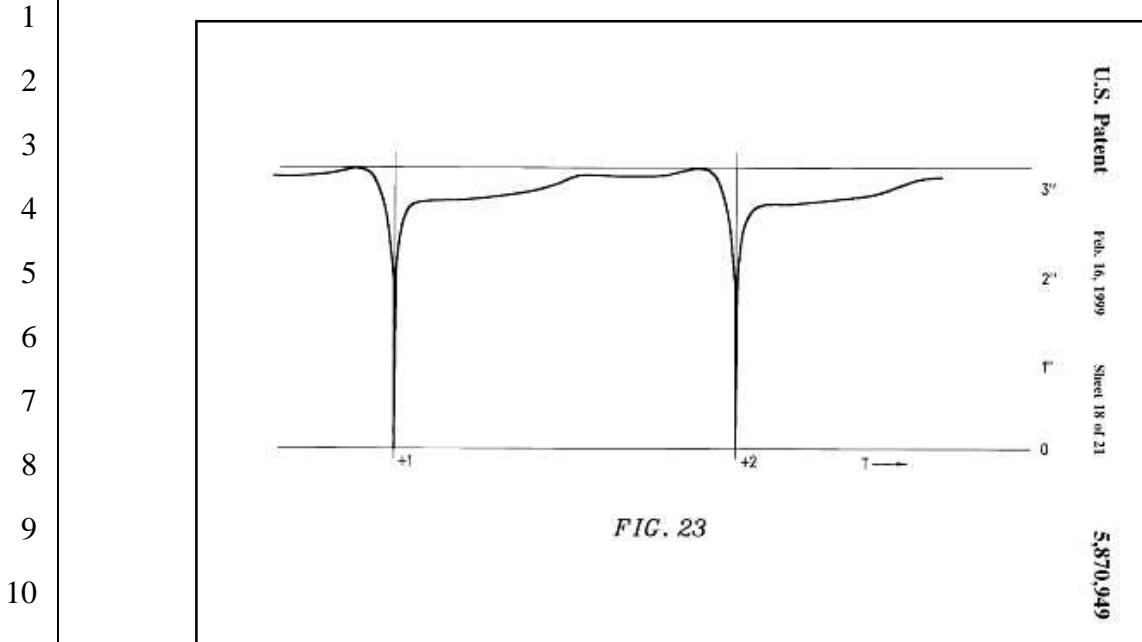
14 Here, each of the Asserted Claims of the ‘949 Patent (Claims 5 and 12), include the claim
 15 terms “pitting operation” and “after the pitting operation.” Each of the Asserted Claims also
 16 contain temporal (time based) limitations which state that certain structures or “holders” move
 17 from a closed configuration to an open configuration “*after* the pitting operation” (see Claim 5,
 18 last element), or that said “holders” vary the gripping force on the fruit “*during* and *after* the
 19 pitting operation.” (see Claim 12, last element). Accordingly, for those skilled in the art to
 20 understand the asserted claims, and to understand whether an accused apparatus infringes, a clear
 21 and distinct understanding of the “pitting operation” and most importantly appraisal of the instant
 22 in time when the “pitting operations” ends (i.e., so as to have an understanding of what “*after* the
 23 pitting operation” means) is absolutely required.

24 Here, the Figures for the ‘949 patent and discussion of the Figures in the specification
 25 discuss the temporal aspects of the pitting operation. Figure 23 provides the following:

26

27

28



The specification then states the following with respect to Figure 23:

FIG. 23 is a graph representing the vertical position of the tip of one of the pitting knives 102 of the FIG. 17 assembly, as a function of time. FIG. 23 shows that the vertical position of the knife tip is cyclical, with pitting occurring at times t1 and t2. As is apparent from inspection of FIG. 23, the knife tip moves (vertically) very rapidly downward toward its lowest position (at each of pitting times t1 and t2), and very rapidly upward from its lowest position. (emphasis added)

In addition, in its discussion of a conventional pitting apparatus (which necessarily includes a pitting operation), the specification of the '949 patent states, “there is substantial friction between the pitting knife, fruit holder, and the fruit flesh both during the downward (pitting) stroke of each knife and the upward (retracting) knife stroke which follows the pitting stroke.” (col. 9, lines 1 – 4) (emphasis added). Elsewhere, the specification states, “After the pitting operation, as knives 102 move upward and to the right (when viewed as in Fig. 6) relative to fixedly mounted grill 34, the grill strips the pitted fruit from the knives.” (col. 5, lines 65-67). Elsewhere, the specification states, “Just after the knives 102 have pitted the fruit articles in a pair of adjacent holders 36 and at an instant when the knives 102 begin to move upward (away from the pitting rubbers 70) . . .” (col. 6, lines 54 – 59). Still, in other portions of the specification, Figures 5 and 10(a) show that the knives in both the prior art and the claimed

1 invention travel well past the surface of the fruit at the end of the downward stroke, and protrude
 2 out beyond the plane formed by the bottom of the rubber fruit cup/holder. The specification
 3 describes Figure 5 as follows:

4 Next, with reference to FIGS. 5, 6, and 9, ***we describe the pitting operation in***
 5 ***more detail*** (in an implementation in which motor 24 continuously translates
 6 holders 36 around the loop defined by sprocket assemblies 32 and 34). FIG. 5
 7 shows a holder 36 and one row of four knives 102 in their lowest position
 8 (extending all the way through pitting rubbers 70 of the four pockets defined by
 the holder), in the position the knives would occupy immediately after pushing
 pits downward (through rubbers 70) from within four articles of fruit seated in the
 pockets. (emphasis added).

9 Although certainly no model of clarity, as Defendants read and interpret Plaintiff's
 10 Infringement Contentions, Plaintiff appears to contend (notwithstanding the above quoted
 11 language and Figures from the '949 patent specification) that the "pitting operation," as that term
 12 is recited in the Asserted Claims 5 and 12, ends some unspecified time before the knives reach
 13 their lowest position, and before they push the pits downward through the rubbers. (*See*
 14 Plaintiff's Infringement Contentions). Thus, Plaintiff appears to contend that the knives are still
 15 moving downward some unspecified period of time "after the pitting operation."

16 To Court's construction of the term pitting operation and the related temporal limitations
 17 result in invalidity because they result in claim terms that are indefinite because they do not
 18 provide clear and distinct disclosure as to when the pitting operation ends.

19 ~~As set forth above, the Court has not yet issued a claim construction ruling. However,~~
 20 ~~assuming only for the sake of argument, and not by way of admission, that the Court construes~~
 21 ~~the claims such that the~~To the extent that the Court's construction of the term "pitting operation"
 22 is to be interpreted to mean that the pitting operation ends sometime while the knives are still
 23 traveling in a downward direction, during their downstroke, such that the pitting operation ends
 24 before the knives reach their "lowest position," then the claim term "pitting operation" and the
 25 term "after the pitting operation" are indefinite and fail to comply with 35 U.S.C. § 112 ¶ 2,
 26 because the legal scope of Claims 5 and 12 of the '949 patent is entirely unclear and cannot be
 27 determined.
 28

1 **b. Claim Term “active assembly” is Indefinite**

2 The claim term “active assembly” is used in both of the asserted claims 5 and 12. This
 3 term has no antecedent basis in the disclosure—it does not appear anywhere in the patent
 4 specification. Given the vagueness of the term “active assembly” which has no particular defined
 5 or understood meaning to those skilled in the art, it is indefinite and its use in both Claims 5 and
 6 12 renders these claims indefinite. Moreover, to the extent that the term “active assembly” is
 7 intended to include a combination of structural elements, such elements are
 8 undefined. Additionally, in light of the Court’s construction of “pitting” related terms, those terms
 9 are indefinite and fail to comply with 35 U.S.C. § 112 ¶ 2, because the legal scope of ‘949
 10 patent’s specification does not recite any type of sensor or sensing means within the fruit pitting
 11 apparatus to signal when the pitting operation has ended, especially because claims 5 and 12 of
 12 the ‘949 patent are entirely unclear and cannot be determined are apparatus claims that should be
 13 defining what the claimed apparatus is.

14 **eb. Mixed Claim Indefiniteness Active Assembly**

15 In light of the Court’s construction of the term “active assembly,” that term is indefinite
 16 and fails to comply with 35 U.S.C. § 112 ¶ 2, because the ‘949 patent’s specification provides
 17 insufficient detail regarding the corresponding structure regarding control signals which can be
 18 generated “in any of a number of well known ways by a conventional timing system.” See See
 19 *Biomedino, LLC v. Waters Technologies Corp.*, 490 F.3d 946 (Fed. Cir. 2007); *Ergo Licensing,*
 20 *LLC v. CareFusion 303, Inc.*, 673 F.3d 1361 (Fed. Cir. 2012); 35 U.S.C. § 112(6); *AllVoice*
 21 *Computing PLC v. Nuance Commc’ns., Inc.* 504 F.3d 1226 (Fed. Cir. 2007). Further, to the
 22 extent that the Plaintiff contends that the corresponding structure of the active assembly includes
 23 structure found in the accused infringing device, then the construction of the active assembly is
 24 indefinite.

25 In addition, claims 5 and 12 of the ‘949 Patent are invalid for indefiniteness under 35
 26 U.S.C. § 101, and 112 ¶ 2, because they recite both an apparatus and a method of using that
 27 apparatus in view of the indefinite temporal limitations wherein the claims describe certain

functions working in sequence with other functions, as would be the case with claims to a method or process. Such mixed claims are invalid under 35 U.S.C. § 101, and 112 ¶ 2. *IPXL Holdings v. Amazon.com, Inc.*, 430 F.3d 1377, 1384–85 (Fed. Cir. 2005); see also *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1217 (Fed. Cir. 1991) (A claim is considered indefinite if it does not reasonably apprise those skilled in the art of its scope). “The Board of Patent Appeals and Interferences (‘Board’) of the PTO . . . has made it clear that reciting both an apparatus and a method of using that apparatus renders a claim indefinite under section 112, paragraph 2. *Ex parte Lyell*, 17 USPQ 2d 1548 (1990). . . . This rule is well recognized and has been incorporated into the PTO’s Manual of Patent Examination Procedure. § 2173.05(p)(II)(1999) (‘A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph.’); see also Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 60A (2001) (‘Never mix claim types to different classes of invention in a single claim.’)).

By way of example and not by way of limitation, assuming arguendo the claims were otherwise valid (they are not), it is unclear whether Plaintiff contends infringement of claim 12, for example, occurs when one makes, sells, offers to sell, or imports an apparatus that among other things, is capable of varying the gripping force after the pitting operation, or whether infringement only occurs when one actually uses the apparatus so as to, among other things, “vary the gripping force exerted by the pockets on specimens of fruit held in said holders during and after the pitting operation.” Because claims 5 and 12 recite both an apparatus and sequential steps in a process as with typical method claims, they do not apprise a person of ordinary skill in the art of their scope, and are invalid.

2. 35 U.S.C. § 112, PARAGRAPH 1—WRITTEN DESCRIPTION

As set forth above, the Court has not yet issued a claim construction ruling. However, assuming only for the sake of argument, and not by way of admission, that the Court construes the claims such To the extent the Plaintiff contends that the Court’s construction of the term pitting operation and the related temporal limitation including during the pitting operation and

1 after the pitting operation mean that the “pitting operation” ends sometime while the knives are
 2 still traveling in a downward direction, during their downstroke, such that the pitting operation
 3 ends before the knives reach their “lowest position,” the Asserted Claims 5 and 12 of the ‘949
 4 Patent are invalid for failure to comply with the written description requirement under 35 U.S.C.
 5 § 112 ¶ 1.

6 Defendants’ grounds for this contention include, without limitation, that the specification
 7 of the ‘949 Patent does not contain any description of any embodiment wherein the “pitting
 8 operation” ends sometime while the knives are still traveling in a downward direction, during
 9 their downstroke, such that the pitting operation ends before the knives reach their “lowest
 10 position”“or even before the knives push the pit through the rubber.” As a result, Plaintiff did not
 11 have, and did not disclose or possess, at the time the application for the ‘949 patent was filed, an
 12 invention wherein the “pitting operation” is completed before the knife reaches its lowest
 13 position.

14 In addition, the specification does not contain an adequate, or any, written description of
 15 the “active assembly” limitation recited in each of the Asserted Claims 5 and 12. That term does
not appear anywhere in the specification.

16 In light of the Court’s construction of “pitting” related terms, ‘949 patent fails to comply
 17 with the written description requirement because the ‘949 patent’s specification does not recite or
disclose any type of sensor or sensing means within the fruit pitting apparatus to signal the
 18 condition of the fruit and when the pitting operation has ended. Thus, the construction of the
temporal limitations of the pitting operation as correlative to the condition of the fruit violates the
 19 written description because the patent specification does not contain such a disclosure, or that the
 20 Plaintiff was ever in possession of such an apparatus in which the pockets of the holders are
 21 closed and opened depending upon the condition of the fruit therein.

22 **3. 35 U.S.C. § 112, PARAGRAPH 1—ENABLEMENT**

23 The ‘949 Patent does not disclose any step, method, device, or feature for generating or
 24 supplying unspecified “control signals” used in some unspecified way to actuate pneumatically

1 ~~driven~~mechanical linear actuators. To the extent that Plaintiff contends that the use of controlled
 2 actuators to cause the fruit holders to open and close at certain times relative to the “pitting
 3 operation” would ~~not~~ have been obvious to a person having ordinary skill in the art, then the
 4 patent fails the enablement requirement, because it fails to disclose the means, apparatus, or
 5 structure necessary to practice that the patented invention. Instead, the specification merely states
 6 that the control signals “can be generated in any number of well known ways.” Accordingly, the
 7 patent is either obvious in that it employs admittedly “well known” and obvious techniques to
 8 vary the gripping force of the holders; or assuming only for the sake of argument that the Court
 9 rules that Claims 5 and 12 are not obvious to one having ordinary skill in the art, then claims 5
 10 and 12, and the specification fail the enablement requirement under 35 U.S.C. § 112, first
 11 paragraph.

12 As set forth above, ~~the Court has not yet issued a~~in light of the Court’s recent claim
 13 construction ~~ruling. However, assuming only for the sake of argument, and not by way of~~
 14 ~~admission, that the Court construes the claims such that the “pitting operation” ends sometime~~
 15 ~~before the knife fully ejects the pit from the rubber holder, the~~, Asserted Claims 5 and 12 of the
 16 ‘949 Patent are not enabled because they fail to recite an essential step or feature of the
 17 apparatus/method namely a type of sensor or sensing means within the fruit pitting apparatus to
 18 signal when the pitting operation has ended. A claim which omits matter disclosed to be
 19 essential to the invention as described in the specification or in other statements of record
 20 violates 35 U.S.C. 112, first paragraph, as not enabling. *In re Mayhew*, 527 F.2d 1229, 188
 21 USPQ 356 (CCPA 1976). Here, ejecting the pit from the rubber is an essential step of the
 22 claimed invention. The claims also omit the structure or steps necessary to provide control
 23 signals to the “active assembly.” According to the specification, these signals are essential the
 24 invention as described, and this also fails the enablement requirement. *Id.*

25 **4. 35 U.S.C. § 101 UTILITY**

26 A claim is inoperable, and therefore fails the utility requirement and enablement
 27 requirement, when it contains a limitation that is impossible to meet. *Process Control Corp. v.*
 28

1 *HydReclaim Corp.*, 190 F.3d 1350, 1359 (Fed. Cir. 1999).

2 As set forth above, the Court has not yet issued a In light of the Court's recent claim
 3 construction ruling. However, assuming only for the sake of argument, and not by way of
 4 admission, that the Court construes the claims such that the "pitting operation" ends sometime
 5 before the knife fully ejects the pit from the rubber holder, the Asserted Claims 5 and 12 of the
 6 '949 Patent are inoperable because such the patent and the claim as construed apparently discloses
 7 a pitting operation would yield a result in which the pit of the subject prune or other fruit does
 8 not leave the holder, and thus the holder, driven on a looped conveyor assembly, would not be
 9 capable of receiving another piece of fruit, thus defeating the entire purpose of the automated
 10 pitting apparatus, and rendering it inoperable and not in compliance with 35 U.S.C. § 101.

11 **II. DOCUMENT PRODUCTION (PATENT L.R. 3-4)**

12 **A. Patent L.R. 3-4(a): Documentation re Operation of Accused Instrumentality**

13 Pursuant to Patent L.R. 3-4(a), Defendants identify and produce concurrently herewith
 14 documents labeled DEF 01071-01098. Defendants also identify Fadei Automatic Prune Pitter M-
 15 292 User's Guide previously produced as DEF 00015-00039, reproduced concurrently herewith
 16 under separate cover with a "CONFIDENTIAL" designation.

17 **B. Patent L.R. 3-4(b): Documents re Prior Art**

18 Pursuant to Patent L.R. 3-4(b), Defendants identify and produce concurrently herewith
 19 documents labeled DEF 00484-01070. Defendants also identify previously produced document
 20 Herbort Cherry and Plum Pitter Model 27A Operating Instructions and Spare Part List (DEF
 21 00040-00057).

1 DATED: JulyJune 28, 20112012

2 DOWNEY BRAND LLP

3 By: _____

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Summary Report:	
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